



# OCCHIPINTI

## Occhipinti Sales Conditions

### **I. Scope of the Conditions**

1. The privity of contract between us and our customer, the contractor, is subject strictly to the general terms and conditions listed below; no general terms and conditions of the contractor which deviate from ours will be accepted. Our general terms and conditions will also apply even when we are cognizant of any contradictory terms and conditions from the customer or any which deviate from our general terms and conditions when accepting and performing contracts.
2. With the exception of the provisions stated below, only the statutory regulations will apply.
3. Our general terms and conditions also apply to any future business.

### **II. Proposal and Contract Award**

1. Our proposals are always subject to confirmation. Cost estimates are non-binding, unless some particular details are defined as binding.
2. A contract will not be effective without our written confirmation thereof.
3. Any documents enclosed with the offer such as diagrams, drawings and technical information are only general descriptions. Unless they are otherwise defined as being binding, they will not define the character of the goods.
4. The constructional and technical prerequisites received from the customer and the information contained in the statement of work will form the basis for our proposals. If these details do not conform with the actual facts and requirements, or if these facts and requirements are omitted, the customer will cover the costs for any new proposal will have to prepare as a result thereof.
5. We reserve the right to make any changes to construction, material and performance, insofar as the scope of performance is not significantly changed as a result thereof and these changes would be just and reasonable for the customer.
6. All drawings and charts, etc. will remain in our possession. Under consideration of our pertinent and existing copyrights for these documents, they may only be disclosed to a third party upon our express and written consent. They have to be returned to us upon request.
7. The contract will be concluded under the proviso that we receive the goods and material we order from our suppliers; this proviso only applies if and when we have concluded a congruent hedging transaction with the supplier and are thus not responsible for any false or missing deliveries. We will inform the customer immediately if and when there is a delay in the delivery or if the delivery could not be made at all. We will also reimburse the customer for any counter-measures the customer has thus undertaken.
8. In the event that those goods ordered are not available, we reserve the right to cancel the contract. We will inform the customer of the non-availability immediately and reimburse the customer for any counter-measures the customer has thus undertaken.

### **III. Scope of Work**

1. Our confirmation of contract is the sole document valid for the scope of work. In the event that any changes are required or, in particular, expand the scope of work agreed upon, the customer has to inform us in writing immediately. The customer will bear any costs resulting from such actions if he is responsible for them.

2. Any and all equipment required for the protection of the subject matter of the contract (in particular electrical, technical and electronic modules), to protect the customer against the loss of data (also within the scope of commissioning the subject matter of the contract), for noise suppression and/or for protection against power fluctuations or outages are only inherent to the scope of work if and when this has been expressly concurred. Electrical and technical material is deemed as conforming with the contract if it meets the requirements of the Association of German Electrical Engineers (VDE), or if it bears the VDE or CE label.
3. We are only responsible for the installation and commissioning of the equipment in the statement of work if we have included it in the scope of work and only in accordance with our general conditions for service and installation.
4. We reserve the right to perform our services as partial orders if this is acceptable for the customer.

#### **IV. Delivery Deadlines and Delays**

1. Work timeframes are only approximate details. They are only binding if we provide confirmation thereof. A timeframe concurred begins with receipt of confirmation of the contract. Clarification of any and all technical or commercial questions by the parties concerned and fulfilment of all obligations by the customer (availability of L/C, securities, payment deposits, provision of the required permits, technical documents, etc.) are the prerequisites for maintaining these timeframes.
2. Each and any change in the order after our confirmation of contract will effect an extension of any dates and deadlines concurred accordingly.
3. The delivery deadline has been maintained if the goods have left our factory prior to its expiration or if the customer has been informed that the goods are ready to be delivered.
4. The work timeframes will be extended by the same length of times lost as a result of force majeure and interruption of operations, strikes and shutouts as well as any other events which will impede our work performance. We will inform our customer immediately of any hindrances and their expected duration.

#### **V. Payment Terms**

1. Invoices are due for payment immediately and without any deductions. We will accept bills of exchange, cheques and other means of payment only as a means of fulfilment. The customer will bear any withdrawal and discount charges to be paid immediately in cash, unless otherwise concurred. We will charge a handling fee of € 50.00 for orders placed to the value of below € 200.00 excluding V.A.T.
2. Unless otherwise agreed upon, the prices are to be understood f.o.b. place of dispatch, including unloading. Packing, freight, customs and other ancillary costs will be invoiced separately. With no exception, the prices are to be understood plus the statutory V.A.T. valid at the time of payment.
3. Upon issuing the confirmation of contract, the customer has to pay a deposit of 30% of the contract sum. The remaining sum in the amount of 70% of the contract sum is to be paid upon delivery or upon receipt of information that the goods are ready to be delivered. If our contractual obligations include installation and/or commissioning of systems or EDP programmes, we are entitled to request adequate partial payments corresponding to the progress of work made. The due dates for the partial payments will be in according to the contractual agreements.
4. Customers in default of payment will be invoiced the statutory default interest. We reserve the express right to assert claims for a higher loss of interest. In this case, the customer is at liberty to provide proof of lower loss.
5. The customer may only exercise lien as a result of counter claims based on the same contractual relationship. During permanent business relationships, each individual contract will count as a separate contract. Charging against our claims is only allowed in the case of legally ascertained claims or ones which we acknowledge.

## **VI. Retention of Title**

1. We reserve the right to retain the title for the foods delivered by us until payment of all our claims and ancillary claims has been completely settled.
2. We are obligated to affranchise those securities we are entitled to, if and when their value exceeds 20% of the claims to be secured.
3. The customer is only allowed to process unpaid goods and/or goods to be retained by us as security upon our written consent. If the contractual object is processed with other objects belonging to the customer, we will assume co-ownership of the new object in the ratio of the sum of the invoice of the contractual object to that of the other processed objects at the time of process. If our contractual object is connected with another object in such a manner that it becomes a substantial part thereof and regarded as the main object, the customer will transfer the proportional co-ownership of the contractual object to us at this point in time. The customer will retain goods not yet processed or ones already processed, for which we have assumed co-ownership, free of charge for us.
4. If the customer connects our goods with another object belonging to a third party and we suffer legal impairment as a result, the customer will at this point in time transfer his claims of ownership for the main object to us.
5. The customer may neither put the contractual object in pawn, nor transfer it as a security. If it is pawned, confiscated or otherwise transferred to a third party, he must inform us immediately.

## **VII. Passing of Risk**

1. Risks of incidental loss or incidental deterioration will be the responsibility of the customer as soon as the goods ordered are handed over to the transportation company, freight carrier or other person or organisation, or after they have left our factory for dispatch. This also applies when we have assumed the transportation costs or delivery, or when partial deliveries are made. Upon the customer's written directives, we will insure the consignment at the standard sum for the field of trade.
2. Software manufactured specially for customers will be considered as accepted when the software has been used without cause for complaint for four weeks.

## **VIII. Liability for Deficiencies**

1. Goods in terms of this provision are not the entire delivery, but solely each individual defective object.
2. The customer has to inform us of any apparent claims in writing immediately, but no later than two weeks. We are entitled to check the alleged deficiencies. If the customer refuses to allow this, we will be exempt from our warranty responsibility.
3. Disproportionate costs in the scope of additional work are considered as such when the costs of the selected type of additional work exceed those of the other type of additional work by more than 25%.
4. Within the scope of post fulfilment of contractual obligations, we should be afforded an adequate timeframe - in no case less than 14 days.
5. The parties agree that, in rectifying the defects, all parts removed will become our property. Deficient goods are to be returned to us after delivery of the non-deficient goods at our expense.
6. In particular, we will not assume guarantee if and when: the customer's inappropriate or improper use of the equipment, the customer's faulty installation, the customer's improper storage, natural and standard wear and tear, faulty maintenance, unsuitable equipment and chemical, electrochemical or electrical influences, insofar they are not our responsibility. Guarantee does likewise not apply for those defects which ensue as a result of not adhering to our information and advice or not paying attention to operating and/or service instructions. Further, we will not assume liability for improper improvements or changes/disassembly of the goods by the customer or a third party contracted by the customer.
7. The customer will bear the costs for any additional work resulting from unauthorised defects.

8. Claims against us from the customer due to a deficiency have a limitation of within one year after delivery of the goods. Paragraph 1 does not apply if we cause the deficiencies intentionally.

#### **IX. Limitation of Liability**

1. We have unlimited liability for compensation if we are to blame for bodily harm, harm to life and health, for damages caused intentionally or due to gross negligence by us or our partners. Insofar as we guarantee a particular quality of the goods, the capability to provide this or another such guarantee, or if claims can be made in accordance with the laws on product liability, we will assume liability for damages intentionally caused. In the case of low-grade negligence of important contractual obligations (so-called cardinal obligations) we will assume liability to the extent of the foreseeable damages pertinent to the contract, which usually does not exceed the purchase price of the goods ordered.
2. Over and above this, we will not assume liability.
3. The regulations listed above will apply to all claims for compensation, regardless of the legal ground and in particular for liability due to non-permissible handling. Further claims from the customer are excluded, particularly claims for damages inflicted on goods not contained in the contract.
4. The statutory rules and regulations for limitation apply.

#### **X. Export Permit/ Court of Jurisdiction/Place of Fulfilment**

1. The export of products may be subject to an export permit according to German or foreign law, e.g. because of its purpose of use. We are not obliged to provide any information or explanations for this. If any products are destined for export, the customer has to obtain all necessary permits and licences. We are not obliged to fulfil the contract if this means infringing the valid export laws.
2. Our headquarters in Karlsruhe is the place of fulfilment for all obligations ensuing from the contract.
3. The court of jurisdiction for legal assertion of the contractual claims from supplies and deliveries is likewise our headquarters in Karlsruhe.
4. Only German law will govern for all legal relationships between the parties concerned. Unified laws on purchasing and the UN purchasing law (CISG) may not be applied.

#### **XI. Miscellaneous**

1. Any changes, additions and other legal declarations with regard to or in connection with the contractual relationship of the parties concerned are to be made in writing in order to become effective. The requirement for the written form may only be waived by a written declaration.
2. If one of the provisions of this business relationship is null and void or become null and void, it will not affect the other provisions. Void provisions are to be replaced by a provision which will legally best fulfil the economic purpose. In the event that some provisions are inappropriate, the section and contents therein deemed as applicable is to be extracted and maintained if suitable for both parties.